

HOUSE BILL 1425
EMERGENCY BILL

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2004 Regular Session
4lr3039

By: ~~Delegate Bromwell~~ Delegates Bromwell, Benson, Boteler, Boutin,
Costa, Donoghue, Elliott, Goldwater, Hammen, Hubbard, Hurson, Kach,
Mandel, McDonough, Morhaim, Murray, Nathan-Pulliam, Oaks,
Pendergrass, Rosenberg, Smigiel, V. Turner, and Weldon

Introduced and read first time: February 24, 2004

Assigned to: Rules and Executive Nominations

Re-referred to: Health and Government Operations, March 8, 2004

Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 1, 2004

CHAPTER _____

1 AN ACT concerning

2 **Department of Health and Mental Hygiene -- Employment Agencies--**
3 **Nursing Referral Services**
4 **Health - General - Nursing Referral Service Agencies - Licensing**

5 ~~FOR the purpose of providing for the establishment of certain nursing referral~~
6 ~~services; prohibiting certain nursing referral services from having an~~
7 ~~employment relationship with certain individuals; requiring certain individuals~~
8 ~~to be licensed by the Department of Health and Mental Hygiene before~~
9 ~~operating certain nursing referral services; requiring the Department to adopt~~
10 ~~certain regulations; requiring certain nursing referral services to develop and~~
11 ~~implement certain procedures relating to the screening of certain licensed~~
12 ~~health professionals or certain care providers; requiring the Department to issue~~
13 ~~a certain license under certain circumstances; authorizing the Department to~~
14 ~~suspend or revoke a certain license under certain circumstances; providing for~~
15 ~~certain penalties for certain violations; altering certain definitions so as to~~
16 ~~exclude certain nursing referral services and certain nurse registries from~~
17 ~~certain provisions that regulate employment agencies, home health agencies,~~
18 ~~and residential service agencies; defining certain terms; making this Act an~~
19 ~~emergency measure; and generally relating to nursing referral services.~~

20 FOR the purpose of exempting certain nursing referral service agencies and certain
21 nurse registries from certain definitions; providing for the scope of this Act;
22 providing for the expiration of certain licenses under certain circumstances;

1 authorizing the Department of Health and Mental Hygiene to issue, deny,
 2 suspend, or revoke certain licenses; requiring a nursing referral service agency
 3 to obtain a license from the Department prior to operating certain agencies;
 4 requiring certain applicants to meet certain requirements; requiring certain
 5 agencies to institute a certain complaint investigation process; requiring a
 6 nursing referral service agency to apply for a certain criminal history records
 7 check or request a certain background check; establishing certain requirements
 8 for the criminal history records check and the background check; requiring the
 9 Department to adopt certain regulations; prohibiting the regulations from
 10 precluding a nursing referral service agency from operating in a certain
 11 manner; requiring the Department to issue a certain license under certain
 12 circumstances; authorizing the Department to suspend or revoke a certain
 13 license under certain circumstances; prohibiting certain individuals from
 14 operating certain agencies under certain circumstances; providing for certain
 15 penalties for certain violations; providing that the granting of a certain license
 16 does not constitute a finding of a certain fact and may not give rise to a certain
 17 presumption; defining certain terms; making this Act an emergency measure;
 18 and generally relating to nursing referral service agencies.

19 BY repealing and reenacting, with amendments,
 20 Article - Business Regulation
 21 Section 9-101(d)
 22 Annotated Code of Maryland
 23 (1998 Replacement Volume and 2003 Supplement)

24 BY repealing and reenacting, with amendments,
 25 Article - Health - General
 26 Section 19-401(c) and 19-4A-01(e)
 27 Annotated Code of Maryland
 28 (2000 Replacement Volume and 2003 Supplement)

29 BY adding to
 30 Article - Health - General
 31 Section 19-4B-01 through ~~19-4B-04~~, 19-4B-06, inclusive, to be under the new
 32 subtitle "Subtitle 4B. Nursing Referral ~~Services~~ Service Agencies"
 33 Annotated Code of Maryland
 34 (2000 Replacement Volume and 2003 Supplement)

35 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 36 MARYLAND, That the Laws of Maryland read as follows:

37 **Article - Business Regulation**

38 9-101.

39 (d) (1) "Employment agency" means a person who, for a fee:

- 1 (i) obtains, offers to obtain, or attempts to obtain:
- 2 1. an employee for a person who seeks an employee; or
- 3 2. employment for a client;
- 4 (ii) provides to a client information to enable the client to obtain
- 5 employment;
- 6 (iii) obtains, offers to obtain, or attempts to obtain employment or
- 7 an engagement in connection with an entertainment, exhibition, or performance,
- 8 including:
- 9 1. a ballet;
- 10 2. a circus;
- 11 3. a concert;
- 12 4. the legitimate theater;
- 13 5. modeling;
- 14 6. a motion picture;
- 15 7. an opera;
- 16 8. a phonograph recording;
- 17 9. the radio;
- 18 10. a transcription;
- 19 11. television;
- 20 12. the variety field; or
- 21 13. vaudeville; or
- 22 (iv) 1. obtains, offers to obtain, or attempts to obtain an alien
- 23 labor certification or immigrant visa for an individual; and
- 24 2. participates directly or indirectly in the recruitment or
- 25 supply of an individual who resides outside of the continental United States for
- 26 employment in the continental United States.
- 27 (2) "Employment agency" does not include a person who merely:
- 28 (i) conducts a business that directly employs individuals to provide
- 29 part-time or temporary services to another person;

1 (ii) as a lawyer, directly obtains an immigrant visa for an
2 individual; [or]

3 (iii) conducts a business that:

4 1. receives a fee that is paid wholly by an employer;

5 2. does not collect money from an individual seeking
6 employment; and

7 3. does not require an individual seeking employment to
8 make a contract; OR

9 (IV) OPERATES A NURSING REFERRAL SERVICE AGENCY THAT IS
10 LICENSED UNDER TITLE 19, SUBTITLE 4B OF THE HEALTH - GENERAL ARTICLE.

11 **Article - Health - General**

12 19-401.

13 (c) (1) "Home health care" means any of the following services that are
14 provided under the general direction of a licensed health professional practicing
15 within the scope of their practice act:

16 (i) Audiology and speech pathology;

17 (ii) Dietary and nutritional services;

18 (iii) Drug services;

19 (iv) Home health aid;

20 (v) Laboratory;

21 (vi) Medical social services;

22 (vii) Nursing;

23 (viii) Occupational therapy;

24 (ix) Physical therapy; OR

25 (x) Provision of medically necessary sickroom equipment and
26 supplies; or

27 (xi) A nurse registry that is an employment agency under the
28 provisions of the Maryland Employment Agency Act].

29 (2) However, the provisions of this subsection do not apply to:

1 (I) A NURSING REFERRAL SERVICE AGENCY THAT IS LICENSED
2 UNDER THE PROVISIONS OF SUBTITLE 4B OF THIS TITLE; OR

3 (II) [a] A home-based hospice care program that is licensed as a
4 home-based hospice care program under the provisions of Subtitle 9 of this title.

5 (3) A home health agency shall also be licensed as a hospice care
6 program if the home health agency operates a hospice care program that is distinct
7 from its other services.

8 19-4A-01.

9 (e) (1) "Residential service agency" means any person that is engaged in a
10 nongovernmental business of employing or contracting with individuals to provide
11 home health care for compensation to an unrelated sick or disabled individual in the
12 residence of that individual.

13 (2) "Residential service agency" includes[:

14 (i) Any] ANY agency that employs or contracts with individuals
15 directly for hire as home health care providers[; or

16 (ii) A nurse registry that is an employment agency under the
17 provisions of the Maryland Employment Agency Act that:

18 1. Screens or refers individuals for a client's selection or
19 rejection, as its sole business operation; and

20 2. Does not itself provide any home health care service].

21 (3) "Residential service agency" does not include:

22 (i) A home health agency that is licensed under the provisions of
23 Subtitle 4 of this title;

24 (ii) A person required to be licensed as a home health agency under
25 the provisions of Subtitle 4 of this title;

26 (iii) A home-based hospice care program that is licensed under the
27 provisions of Subtitle 9 of this title;

28 (iv) A hospital that is licensed under the provisions of Subtitle 3 of
29 this title;

30 (v) A related institution that is licensed under the provisions of
31 Subtitle 3 of this title;

32 (vi) Personal care providers under the Medical Assistance Personal
33 Care Program;

1 (vii) Any person practicing a health occupation that the person is
2 authorized to practice under the Health Occupations Article;

3 (VIII) A NURSING REFERRAL SERVICE AGENCY THAT IS LICENSED
4 UNDER SUBTITLE 4B OF THIS TITLE;

5 [(viii)] (IX) A group of persons licensed under the same title of the
6 Health Occupations Article practicing as a business; or

7 [(ix)] (X) Residential rehabilitation services providers approved
8 under regulations adopted by the State Mental Health Authority.

9 SUBTITLE 4B. NURSING REFERRAL ~~SERVICES~~ SERVICE AGENCIES.
10 19-4B-01.

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

13 ~~(B)~~ (C) "BACKGROUND CHECK" HAS THE MEANING STATED IN § 19-1901 OF THIS
14 TITLE.

15 ~~(B)~~ (C) "CARE PROVIDER" MEANS AN INDIVIDUAL WHO PROVIDES HEALTH
16 CARE SERVICES AND ASSISTANCE TO A CLIENT IN THE ACTIVITIES OF DAILY LIVING,
17 INCLUDING:

18 (1) BATHING, TOILETING, AND PERSONAL HYGIENE;

19 (2) DRESSING;

20 (3) MEAL PREPARATION AND EATING;

21 (4) COMPANIONSHIP; AND

22 (5) ASSISTANCE IN PHYSICAL TRANSFER AND AMBULATION.

23 (D) "CENTRAL REPOSITORY" MEANS THE CRIMINAL JUSTICE INFORMATION
24 SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND
25 CORRECTIONAL SERVICES.

26 ~~(C)~~ (E) "HOME HEALTH AID SERVICES" MEANS PERSONAL AND HEALTH
27 CARE SERVICES DELIVERED TO A CLIENT BY A CARE PROVIDER.

28 ~~(D)~~ (F) "LICENSE" MEANS A NURSING REFERRAL SERVICE AGENCY LICENSE.

29 ~~(E)~~ (G) "LICENSED HEALTH PROFESSIONAL" MEANS AN INDIVIDUAL WHO IS
30 LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE
31 HEALTH CARE SERVICES.

32 ~~(F)~~ (H) "NURSING REFERRAL SERVICE AGENCY" MEANS ONE OR MORE
33 INDIVIDUALS ENGAGED IN THE BUSINESS OF SCREENING ~~OR~~ AND REFERRING,

1 DIRECTLY OR IN ACCORDANCE WITH CONTRACTUAL ARRANGEMENTS THAT MAY
 2 INCLUDE INDEPENDENT CONTRACTORS, WHO ARE LICENSED HEALTH
 3 PROFESSIONALS OR CARE PROVIDERS TO CLIENTS FOR THE PROVISION OF ~~SKILLED~~
 4 ~~OR CERTIFIED~~ NURSING SERVICES, HOME HEALTH AID SERVICES, OR OTHER HOME
 5 HEALTH CARE SERVICES ~~IN THE RESIDENCE~~ AT THE REQUEST OF THE CLIENT.

6 (I) "PRIVATE AGENCY" HAS THE MEANING STATED IN § 19-1901 OF THIS TITLE.

7 19-4B-02.

8 THIS SUBTITLE DOES NOT LIMIT THE RIGHT OF ANY PERSON WHO HOLDS A
 9 LICENSE UNDER THIS ARTICLE TO ACT AS AUTHORIZED BY THAT LICENSE.

10 19-4B-03.

11 (A) (1) A NURSING REFERRAL SERVICE AGENCY MAY RECEIVE A FEE OR
 12 OTHER COMPENSATION FOR PROVIDING A ~~SERVICE AS A REFERRAL SOURCE FOR~~
 13 ~~CLIENTS AND INDEPENDENT CONTRACTORS~~ ITS SERVICES.

14 (2) A CONTRACTUAL ARRANGEMENT MAY PROVIDE THAT A NURSING
 15 REFERRAL SERVICE AGENCY IS NOT RESPONSIBLE FOR PAYING ANY PART OF THE
 16 COMPENSATION TO THE LICENSED HEALTH CARE PROFESSIONALS OR CARE
 17 PROVIDERS THAT THE NURSING REFERRAL SERVICE AGENCY SCREENS OR REFERS
 18 TO CLIENTS ~~FOR SERVICES.~~

19 (3) A NURSING REFERRAL SERVICE AGENCY MAY PROVIDE
 20 ADMINISTRATIVE ASSISTANCE ~~FOR CLIENTS.~~

21 ~~(B) A NURSING REFERRAL SERVICE MAY NOT HAVE AN EMPLOYMENT~~
 22 ~~RELATIONSHIP WITH THE LICENSED HEALTH CARE PROFESSIONALS OR CARE~~
 23 ~~PROVIDERS THAT IT SCREENS OR REFERS TO CLIENTS.~~

24 ~~(C)~~ (B) A NURSING REFERRAL SERVICE AGENCY SHALL:

25 (1) OBTAIN A LICENSE FROM THE DEPARTMENT PRIOR TO OPERATING
 26 AS A NURSING REFERRAL SERVICE AGENCY;

27 (2) DEVELOP AND IMPLEMENT A PROCEDURE TO SCREEN LICENSED
 28 HEALTH PROFESSIONALS AND CARE PROVIDERS THAT INCLUDES THE FOLLOWING:

29 (I) IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION:

30 1. A STATE CRIMINAL ~~BACKGROUND~~ HISTORY RECORDS
 31 CHECK; OR

32 2. A PRIVATE AGENCY BACKGROUND CHECK;

33 (II) VERIFICATION OF CURRENT LICENSURE OR CERTIFICATION
 34 UNDER THE HEALTH OCCUPATIONS ARTICLE;

1 (III) A BASIC HEALTH SCREENING, INCLUDING A TUBERCULOSIS
2 SCREENING;

3 (IV) VERIFICATION OF REFERENCES;

4 (V) VERIFICATION OF EMPLOYMENT HISTORY;

5 (VI) COMPLETION OF I-9 FORMS; AND

6 (VII) AN IN-PERSON INTERVIEW OF A LICENSED HEALTH
7 PROFESSIONAL AND CARE PROVIDER BEFORE ANY REFERRAL OF THE INDIVIDUAL IS
8 MADE TO A CLIENT;

9 (3) INSTITUTE AN INTERNAL CLIENT COMPLAINT INVESTIGATION
10 PROCESS THAT INCLUDES:

11 (I) NOTICE TO THE CLIENT OR THE CLIENT'S REPRESENTATIVE OF
12 THE COMPLAINT PROCESS; AND

13 (II) PROTOCOLS TO INVESTIGATE COMPLAINTS;

14 (4) PROVIDE NOTICE TO CLIENTS OF THE DEPARTMENT'S COMPLAINT
15 HOTLINE NUMBER FOR COMPLAINTS ABOUT THE SERVICES PROVIDED BY AN
16 INDIVIDUAL REFERRED BY THE NURSING REFERRAL SERVICE AGENCY; AND

17 (5) ALLOW CLIENTS TO ACCEPT OR REJECT, AT THEIR DISCRETION, ANY
18 LICENSED HEALTH PROFESSIONAL OR CARE PROVIDER REFERRED BY THE NURSING
19 REFERRAL SERVICE AGENCY.

20 (C) (1) FOR EACH LICENSED HEALTH PROFESSIONAL AND CARE PROVIDER,
21 A NURSING REFERRAL SERVICE AGENCY SHALL:

22 (I) APPLY TO THE CENTRAL REPOSITORY FOR A STATE CRIMINAL
23 HISTORY RECORDS CHECK; OR

24 (II) REQUEST A PRIVATE AGENCY TO CONDUCT A BACKGROUND
25 CHECK.

26 (2) (I) AS PART OF THE APPLICATION FOR A CRIMINAL HISTORY
27 RECORDS CHECK, THE NURSING REFERRAL SERVICE AGENCY SHALL SUBMIT TO THE
28 CENTRAL REPOSITORY:

29 1. TWO COMPLETE SETS OF LEGIBLE FINGERPRINTS OF THE
30 LICENSED HEALTH PROFESSIONAL OR CARE PROVIDER TAKEN ON FORMS APPROVED
31 BY THE DIRECTOR OF THE CENTRAL REPOSITORY; AND

32 2. THE FEE AUTHORIZED UNDER § 10-221(B)(7) OF THE
33 CRIMINAL PROCEDURE ARTICLE FOR ACCESS TO MARYLAND CRIMINAL HISTORY
34 RECORDS.

1 (II) IN ACCORDANCE WITH §§ 10-201 THROUGH 10-228 OF THE
2 CRIMINAL PROCEDURE ARTICLE, THE CENTRAL REPOSITORY SHALL FORWARD TO
3 THE LICENSED HEALTH PROFESSIONAL OR CARE PROVIDER AND THE NURSING
4 REFERRAL SERVICE AGENCY A PRINTED STATEMENT LISTING THE CRIMINAL
5 CONVICTIONS OF THE LICENSED HEALTH PROFESSIONAL OR CARE PROVIDER.

6 (III) INFORMATION OBTAINED FROM THE CENTRAL REPOSITORY
7 UNDER THIS SUBSECTION:

8 1. IS CONFIDENTIAL AND MAY NOT BE REDISSEMINATED;
9 AND

10 2. MAY BE USED ONLY FOR THE SCREENING PURPOSE
11 AUTHORIZED BY THIS SUBSECTION.

12 (IV) THE SUBJECT OF A CRIMINAL HISTORY RECORDS CHECK
13 UNDER THIS SUBSECTION MAY CONTEST THE CONTENTS OF THE PRINTED
14 STATEMENT ISSUED BY THE CENTRAL REPOSITORY AS PROVIDED IN § 10-223 OF THE
15 CRIMINAL PROCEDURE ARTICLE.

16 (3) IF A NURSING REFERRAL SERVICE AGENCY REQUESTS A PRIVATE
17 AGENCY TO CONDUCT A BACKGROUND CHECK:

18 (I) THE PRIVATE AGENCY SHALL:

19 1. CONDUCT A BACKGROUND CHECK IN EACH STATE IN
20 WHICH THE NURSING REFERRAL SERVICE AGENCY KNOWS OR HAS REASON TO
21 KNOW THE LICENSED HEALTH PROFESSIONAL OR CARE PROVIDER WORKED OR
22 RESIDED DURING THE PAST 7 YEARS; AND

23 2. ISSUE A STATEMENT OF ITS FINDINGS TO:

24 A. ON REQUEST, THE LICENSED HEALTH PROFESSIONAL OR
25 CARE PROVIDER; AND

26 B. THE NURSING REFERRAL SERVICE AGENCY; AND

27 (II) THE LICENSED HEALTH PROFESSIONAL OR CARE PROVIDER
28 SHALL HAVE AN OPPORTUNITY TO CONTEST THE FINDINGS.

29 ~~19-4B-03.~~ 19-4B-04.

30 (A) (1) ~~THE DEPARTMENT SHALL ADOPT REGULATIONS THAT SET~~
31 ~~STANDARDS FOR THE CARE, TREATMENT, HEALTH, SAFETY, WELFARE, AND~~
32 ~~COMFORT OF INDIVIDUALS WHO RECEIVE HOME HEALTH CARE SERVICES THROUGH~~
33 ~~A NURSING REFERRAL SERVICE. TO IMPLEMENT THE REQUIREMENTS OF THIS~~
34 SUBTITLE.

35 (2) THE REGULATIONS MAY NOT PRECLUDE A NURSING REFERRAL
36 SERVICE AGENCY FROM OPERATING WITH INDEPENDENT CONTRACTORS.

1 (B) THE DEPARTMENT SHALL ISSUE A 3-YEAR LICENSE TO A NURSING
2 REFERRAL SERVICE AFTER THE NURSING REFERRAL SERVICE AGENCY:

3 (1) COMPLETES AN APPLICATION FOR LICENSURE; AND

4 (2) PAYS A LICENSING FEE OF \$1,000 TO THE DEPARTMENT.

5 (C) A LICENSE SHALL EXPIRE ON THE THIRD ANNIVERSARY OF ITS EFFECTIVE
6 DATE UNLESS:

7 (1) THE DEPARTMENT SUSPENDS OR REVOKES THE LICENSE; OR

8 (2) THE LICENSE IS RENEWED.

9 (D) THE DEPARTMENT MAY SUSPEND OR REVOKE A LICENSE ISSUED UNDER
10 THIS SECTION IF THE NURSING REFERRAL SERVICE AGENCY IS OPERATING IN
11 VIOLATION OF THE REQUIREMENTS OF THIS SUBTITLE.

12 ~~19-4B-04.~~ 19-4B-05.

13 (A) AN INDIVIDUAL MAY NOT OPERATE OR ENGAGE IN, ATTEMPT TO OPERATE
14 OR ENGAGE IN, OR HOLD ONE'S SELF OUT AS OPERATING OR ENGAGED IN THE
15 BUSINESS OF A NURSING REFERRAL SERVICE AGENCY UNLESS THE INDIVIDUAL IS
16 LICENSED UNDER THIS SUBTITLE.

17 (B) (1) AN INDIVIDUAL WHO VIOLATES THIS SECTION IS GUILTY OF A
18 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000
19 FOR THE FIRST OFFENSE AND NOT EXCEEDING \$10,000 FOR EACH SUBSEQUENT
20 OFFENSE.

21 (2) EACH DAY A VIOLATION IS CONTINUED AFTER THE FIRST
22 CONVICTION IS A SEPARATE OFFENSE.

23 19-4B-06.

24 FOR THE PURPOSES OF ANY OTHER PROVISION OF LAW, THE GRANTING OF A
25 LICENSE UNDER THIS SUBTITLE DOES NOT CONSTITUTE A FINDING OF ANY FACT ON
26 WHICH THE GRANTING OF THE LICENSE WAS BASED AND MAY NOT GIVE RISE TO
27 ANY PRESUMPTION REGARDING THE EXISTENCE OF ANY FACT ON WHICH THE
28 GRANTING OF THE LICENSE WAS BASED.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
30 measure, is necessary for the immediate preservation of the public health or safety,
31 has been passed by a yea and nay vote supported by three-fifths of all the members
32 elected to each of the two Houses of the General Assembly, and shall take effect from
33 the date it is enacted.

